

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

ROSY ESPRECION THOMAS,)	CIVIL NO. 21-00431 LEK-WRP
)	
Plaintiff,)	FINDINGS AND
)	RECOMMENDATION TO
vs.)	DISMISS ACTION
)	
)	
INTERNAL REVENUE SERVICE,)	
ET AL.,)	
)	
Defendants.)	
)	

FINDINGS AND RECOMMENDATION TO DISMISS ACTION

Pro se Plaintiff commenced this action on November 1, 2021, also filing on that date an Application to Proceed in District Court Without Prepaying Fees or Costs (Application). See ECF Nos. 1, 2. On November 4, 2021, this Court issued Findings and Recommendation, recommending that the District Court deny Plaintiff's Application and instruct Plaintiff that, if she wished to proceed with the action, she remit the appropriate filing fee within thirty days from the District Court acting upon the Findings and Recommendation. See ECF No. 5.

On December 3, 2021, before the District Court had an opportunity to act on the Findings and Recommendation, Plaintiff filed a motion requesting that this Court reconsider the Findings and Recommendation. See ECF No. 6. On

December 14, 2021, this Court denied Plaintiff's motion for reconsideration, and issued Amended Findings and Recommendation. See ECF No. 7. This Court's Amended Findings and Recommendation again recommended that the District Court deny Plaintiff's Application, but also now recommended that the District Court "DISMISS Plaintiff's Complaint with leave to file an amended complaint curing the deficiencies identified above no later than thirty days from the District Court's adoption of this Findings and Recommendation [and] CAUTION Plaintiff that failure to file an amended complaint within the time frame specified above will result in the automatic dismissal of this action." Id.

On December 30, 2021, the District Court adopted this Court's Amended Findings and Recommendation. See ECF No. 10. More than thirty days have passed since the District Court adopted this Court's Amended Findings and Recommendation; however, Plaintiff has not filed an amended pleading.

Based on the foregoing, the Court finds and recommends that this action be dismissed. Courts do not take failures to prosecute and failures to comply with Court orders lightly. Federal Rule of Civil Procedure 41(b) authorizes the Court to sua sponte dismiss an action for failure "to prosecute or to comply with [the federal] rules or a court order." Fed. R. Civ. P. 41(b); Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005). Unless the Court in its order for dismissal otherwise specifies, a dismissal under this rule operates as an adjudication upon the merits. See Fed. R. Civ. P. 41(b).

To determine whether dismissal is appropriate, the Court must consider five factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002). Although the Court recognizes that Plaintiff is proceeding pro se, she is not exempt from complying with all applicable rules. See Local Rule 81.1(a).

In view of Plaintiff’s failure to comply with the District Court’s prior Order, and failure to prosecute this action, the Court finds that the Pagtalunan factors support dismissal of this action. The public’s interest in expeditious resolution of this litigation strongly favors dismissal, as does the Court’s need to manage its docket. See Pagtalunan 291 F.3d at 642. There is no risk of prejudice to Defendants, as they have yet to be served. Finally, there are currently no less drastic alternatives available. This case cannot proceed without an operative pleading. The Court concedes that the public policy favoring disposition of cases on their merits weighs against dismissal. However, considering the totality of the circumstances and because all of the preceding factors favor dismissal, this factor is outweighed.

CONCLUSION

For the reasons stated herein, the Court FINDS AND
RECOMMENDS that this action be DISMISSED.

IT IS SO FOUND AND RECOMMENDED.

DATED AT HONOLULU, HAWAII, FEBRUARY 4, 2022.



A handwritten signature in black ink, appearing to read "Wes Reber Porter".

Wes Reber Porter
United States Magistrate Judge

**THOMAS V. INTERNAL REVENUE SERVICE, ET AL.; CIVIL NO. 21-00431
LEK-WRP; FINDINGS AND RECOMMENDATION TO DISMISS ACTION**